Explanatory Note: Involvement in tax transfers, payments and refunds

The Department has received a number of questions from accounting practices seeking clarification on whether activities relating to tax transfers, payments and refunds are captured activities for the purposes of the AML/CFT Act.

The Department’s view is that preparing and filing a client’s tax return as part of a tax accounting service is not ordinarily covered by the AML/CFT Act. However, in some circumstances, involvement by an accounting practice in any associated tax transfers, payments and/or refunds will be captured by the AML/CFT Act. The activities in the AML/CFT Act that are most likely to be relevant in this context are:

- Managing client funds, accounts, securities or other assets (paragraph (a)(iv) of the definition of designated non-financial business or profession (DNFBP));
- Engaging in or giving instructions for a transaction on behalf of a customer in relation to creating, operating, and managing a legal person or other legal arrangement (paragraph (a)(vi)(E) of the definition of DNFBP) (engaging in/giving instructions).

Managing client funds

For a tax transfer, payment and/or refund to be captured as managing client funds, the key determining factor is whether the accountant has control over the flow of the funds. This may include, but is not limited to, the following circumstances:

- Receiving or holding funds relating to a client’s tax obligations in an accounting practice trust account.
- Having authority over a client’s bank account and making payments from that account on behalf of a client for tax payments.
- Conducting tax transfers in the Inland Revenue system.

Engaging in/giving instructions

Engaging in/giving instructions includes situations where a reporting entity only provides instructions without necessarily having control over the flow of funds. This activity is only covered by the AML/CFT Act where the transaction relates to the creating, operating or managing a legal person (for example, a company) or other legal arrangement (and not a natural person).

For a tax transfer, payment and/or refund to be captured as engaging in/giving instructions, the following criteria must be met:

- engaging in the transaction or giving instruction on behalf of a customer to another person to engage in the transaction
- the transaction must be a deposit, withdrawal, exchange or transfer of funds in cash, by cheque (or similar) or by electronic or other non-physical means
- the transaction must be on behalf of a customer
- the transaction must relate to creating, operating or managing a legal person (e.g. company) or other legal arrangement (trust, partnership or charitable entity)

Why is ‘engaging in or giving instructions’ (in addition to ‘managing client funds’) captured for transactions involving legal persons or legal arrangements?

Legal persons and legal arrangements may be misused by criminals to conceal beneficial ownership and the natural persons on whose behalf a financial transaction is conducted. Capturing ‘engaging or giving instructions’ for these tax transfers, payments and/or refunds reflects this ML/FT risk.

This explanatory note is provided for information only and cannot be relied on as evidence of complying with the requirements of the AML/CFT Act. It does not constitute legal advice and cannot be relied on as such. After reading this explanatory note, if you do not fully understand your obligations you should seek legal advice or contact your AML/CFT supervisor.